

Assembly Bill No. 2038

Passed the Assembly August 29, 2006

Chief Clerk of the Assembly

Passed the Senate August 28, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17310, 17314.1, 17331.2, and 17419 of the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2038, Tran. Escrow agents.

The Escrow Law provides for licensing and regulation of escrow agents, other than certain exempt persons, by the Commissioner of Corporations. Existing law requires licensees to apply for membership in the Escrow Agents' Fidelity Corporation, a nonprofit mutual benefit corporation, which is established to indemnify its members against loss of trust obligations, which indemnification may be accomplished through a fund established by the corporation or a fidelity bond or insurance policy approved by the commissioner or a combination thereof. Existing law requires a Department of Justice background check relative to each employee, shareholder, or other person to be compensated by a member of Fidelity Corporation and provides for the corporation to deny the application or suspend or revoke the certificate of that person on specified grounds, including criminal convictions for certain financial crimes.

This bill would require Fidelity Corporation to provide a copy of the fidelity bond or insurance policy, if any, to all members and to the commissioner. The bill would define conviction for purposes of application denial or certificate revocation, and would, under certain conditions, require, rather than authorize, the corporation to suspend the certificate. The bill would make other related changes.

Existing law requires a person seeking employment with an escrow agent to complete a specified employment application that asks certain questions, including whether the person has been convicted of a crime, as specified.

This bill would modify the definition of "convicted" in that regard.

Under existing law, the escrow agent's employment application provides that any person who provides false

information is guilty of a felony and shall, upon conviction, be fined, imprisoned, or both.

This bill would delete that provision.

The people of the State of California do enact as follows:

SECTION 1. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member within the State of California against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2) subject, however, to the maximum coverage specified in subdivision (b) of Section 17314.

(d) Fidelity Corporation shall provide a copy to all of its members and the commissioner of the fidelity bond or insurance policy as it is acquired or renewed, and Fidelity Corporation shall promptly provide a copy to any member or successor in interest, upon request.

SEC. 2. Section 17314.1 of the Financial Code is amended to read:

17314.1. (a) Notwithstanding any other provision of this article, Fidelity Corporation shall not be obligated to pay any claim made by a member unless (1) the claim would, except for the dollar amount thereof, be a valid claim under the bond as prescribed by Section 17203.1 and (2) the claim is made within the time prescribed by Section 17205. The protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall therefore be deemed to be coextensive except as to the dollar amounts as set forth in Section 17314. All defenses available to the insurer under the fidelity

bond or insurance policy, if any, on any claim shall also be a defense to Fidelity Corporation, as either an indemnitor or surety, on any claim brought against the corporation.

(b) No person other than a member, or the member's successor in interest, who shall be the commissioner, a conservator, receiver, or trustee as designated by a court of competent jurisdiction, is entitled to assert a claim against Fidelity Corporation for losses covered under this article.

SEC. 3. Section 17331.2 of the Financial Code is amended to read:

17331.2. (a) Fidelity Corporation shall deny the application for a certificate or revoke the certificate of any person, upon any of the following grounds:

(1) The application contains a material misrepresentation of fact or fails to disclose a material fact so as to render the application false or misleading, or if any fact or condition exists which, if it had existed at the time of the original application for a certificate, reasonably would have warranted Fidelity Corporation to refuse originally to issue that certificate.

(2) That the person has been convicted of a crime or offense, whether a felony, an offense punishable as a felony, or a misdemeanor, that involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, misappropriation of property, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division. A conviction within the meaning of this section is a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction also includes an order granting probation and suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 or 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. If, however, the conviction is more than 10 years old, or the conviction has been expunged, or the person has obtained a certificate of rehabilitation or relief under Section 1203.4 or 1203.4a of the Penal Code, or if the conviction was an infraction, then the person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty

that the conviction is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(3) That the person has been held liable in a civil action by final judgment of any court if the judgment involved dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property or the person has been ordered to make restitution to a victim in any criminal case involving a crime or offense set forth in paragraph (2). The person may have a Fidelity Corporation certificate upon showing by clear and convincing proof to a reasonable certainty that the judgment or restitution order is no longer reasonably related to the qualifications, functions, or duties of a person engaged in business in accordance with this division or that person's employment with a member.

(4) That the person has (A) committed or caused to be committed an act which caused any member to suffer a loss; (B) committed or caused to be committed or colluded with any other person committing any act which caused a loss, for which Fidelity Corporation or the insurer on any insurance policy or fidelity bond purchased by Fidelity Corporation, or both, to become liable to indemnify any member; or (C) committed or caused to be committed an act of dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, to the material damage of a member or for which the member has been held liable to any third party, by final judgment.

(5) That the person has been barred from employment by final order of the commissioner pursuant to Section 17423.

(6) That the person has been deemed not qualified to serve in any capacity as a director or officer or in any other position involving management duties with a financial institution, pursuant to Division 1.8 (commencing with Section 4990).

(7) That the person has been denied coverage or reinstatement by any insurer under any fidelity bond or crime policy, unless a decision of reinstatement of coverage has been made after that denial. A person who obtained a decision of reinstatement of coverage prior to the effective date of this section may have a Fidelity Corporation certificate notwithstanding paragraphs (2)

and (3) of this subdivision, unless any other ground for denial or revocation applies to that person.

(b) Fidelity Corporation shall suspend the certificate of any person upon either of the following grounds:

(1) That the person has been censured or suspended from any position of employment by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(2) That the person has been barred from any position of employment or management or control of any escrow agent, for a term of less than permanent, by final order of the commissioner. The certificate suspension shall be for a term concurrent with the final order of the commissioner.

(c) Fidelity Corporation may suspend the certificate of any person under either of the following grounds:

(1) That there is an action commenced by the commissioner to either suspend or bar that person, under Section 17423.

(2) That any member with whom the person was employed has given a proof of loss or a notice of an occurrence which may give rise to a claim for a loss of trust obligations either of which identifies the person as the person responsible for the loss or as a person acting in collusion with the person causing the loss.

(d) Upon denial of an application for, or upon suspension or revocation of the certificate of any person, Fidelity Corporation shall provide written notice to the member with whom that person is employed of the decision, pending any appeal therefrom which might be made. Thereafter, the member shall not allow that person to have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent, but that person may otherwise continue in the performance and discharge of other duties of an employee. Fidelity Corporation shall notify the person in writing of the decision to deny, suspend, or revoke the certificate and of the person's right of appeal, together with the notice of appeal. The grounds and basis for the decision shall be stated in the notice thereof. All notices may be served either personally or by mail, properly addressed to the address of record for the member and the person.

(e) Any person whose application for a certificate has been denied, or whose certificate has been suspended or revoked, may appeal the decision, as provided in Section 17331.3. While that appeal is pending, the person may not have access to money or negotiable instruments or securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent, but that person may otherwise continue in the performance and discharge of other duties of an employee pending final decision of that person's appeal. Failure to remove the person whose application has been denied, or whose certificate has been suspended or revoked, as a signer on the trust accounts may be subject to action by the commissioner as provided for in this division and shall be subject to penalties as set forth in Section 17331.1.

(f) Upon expiration of the time for an appeal, or upon conclusion of the appeal, the decision to deny an application for or to suspend or revoke the certificate of any person shall become final. Fidelity Corporation shall give written notice to the member and to the person of the final decision within 10 days. Thereafter, Fidelity Corporation shall disclose in writing to all members the identity of persons whose application has been denied or whose certificate has been revoked.

SEC. 4. Section 17419 of the Financial Code is amended to read:

17419. On and after January 1, 1992, any person seeking employment with an escrow agent shall complete an employment application on or before the first day of employment which includes, at least, the following information. A copy of the employment application shall be forwarded to the commissioner on or before the first day of the applicant's employment. Persons required to file a statement of identity and questionnaire pursuant to subdivision (f) of Section 17209 or Section 17212.1 are not required to file the employment application set forth in this section. Each person completing the employment application shall be given the notice required by the Information Practices Act (Section 1798.17 of the Civil Code), copies of which may be obtained from the commissioner. Nothing in this section shall limit an escrow agent from requesting additional information from an applicant.

STATEMENT OF IDENTITY
AND EMPLOYMENT APPLICATION

Name of Escrow Company: _____

Escrow Agent License Number: _____

1. Exact Full Name:

(Please Print or Type) First Name Middle Name Last Name

(Do not use initials or nicknames)

Title of position to be filled in connection with the preparation of this
employment application.

2. Employment for the last 10 years:

From	To	Employer Name and Address	Occupation and Duties
	Present		

NOTE: Attach separate schedule if space is not adequate.

3. Residence addresses for the last 10 years:

From	To	Street	City	State
	Present			

NOTE: Attach separate schedule if space is not adequate.

4. Have you ever been named in any order, judgment or decree of any court or any governmental agency or administrator, temporarily or permanently restraining or enjoining you from engaging in or continuing any conduct, practice or employment?

☐ Yes

☐ No

If the answer is "Yes", please complete the following:

Date of Suit: _____

Location of Court (City, County, State): _____

Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

5. Have you ever been refused a license to engage in any business in this state or any other state, or has any such license ever been suspended or revoked?

☐ Yes

☐ No

If the answer is "Yes," please complete the following:

State: _____ Title of State Department: _____

Nature of License and Number: _____

Note: Attach a certified copy of any order, judgment, or decree.

6. Have you ever been convicted of or pleaded nolo contendere to a crime other than minor traffic citations that do not constitute a misdemeanor or felony offense?

NOTE: A conviction is a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction also includes an order granting probation and suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 or 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty, or dismissing the accusation, information, or indictment.

☐ Yes ☐ No

If the answer is “Yes” please complete the following:

Date of Case: _____

Location of Court (City, County, State): _____

Nature of Case: _____

Note: Attach a certified copy of any order, judgment, or decree.

7. Have you ever been a defendant in a civil court action other than divorce, condemnation or personal injury?

☐ Yes ☐ No

If the answer is “Yes” please complete the following:

Date of Suit: _____

Location of Court (City, County, State): _____

Nature of Suit: _____

Note: Attach a certified copy of any order, judgment, or decree.

8. Have you ever changed your name or ever been known by any name other than that herein listed?

(Including a woman’s maiden name)

☐ Yes ☐ No

If so, explain. Change in name through marriage or court order should also be listed.

EXACT DATE OF EACH NAME CHANGE MUST BE LISTED.

9. Have you ever done business under a fictitious firm name either as an individual or in the partnership or corporate form?

☐ Yes ☐ No

If the answer is “Yes” set forth particulars:

10. Have you ever been a subject of a bankruptcy or a petition in bankruptcy?

☐ Yes ☐ No

If the answer is "Yes" give date, title of case, location of bankruptcy filing:

11. Have you ever been refused a bond, or have you ever had a bond revoked or canceled?

☐ Yes ☐ No

If the answer is "Yes" give details:

12. In what capacity will you be employed? _____
(e.g., Clerk, Escrow Officer, Receptionist, etc.)

13. Do you expect to be a party to, or broker or salesman in connection with escrows conducted by the escrow company which is employing you?

☐ Yes ☐ No

If the answer is "Yes" please explain:

NOTE: Attach separate schedule if space is not adequate.

VERIFICATION

I, the undersigned, state that I am the person named in the foregoing Statement of Identity and Employment Application; that I have read and signed said Statement of Identity and Employment Application and know the contents thereof, including all exhibits attached thereto, and that the statements made therein, including any exhibits attached thereto, are true.

Any person who knows or should have known of a violation of this section shall immediately report the violation in writing to the commissioner.

I certify/declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____
(City)

(County) (State)
this _____ day of _____, 20 ____.

(Signature of Declarant)

Approved _____, 2006

Governor